Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

GLEN K. SANDLIN,

Petitioner,

v.

CORPORATE INTERIORS, INC., SVEIN REICHBORN-KJENNERUD, SANDRA REICHBORN-KJENNERUD, 2601 BLAKE STREET, COLORADO NATIONAL BANK, INTERIOR SERVICES, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

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(303) 534-0153

ATTORNEY FOR PETITIONER

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QUESTION PRESENTED FOR REVIEW

Whether the dismissal of petitioner's state court case to enforce his federal court judgment for willful age discrimination in employment was based on an arbitrary and discriminatory application of state procedural rules depriving him of his First Amendment right to petition the government for a redress of grievances.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

GLEN K. SANDLIN,

Petitioner,

v.

CORPORATE INTERIORS, INC., SVEIN REICHBORN-KJENNERUD, SANDRA REICHBORN-KJENNERUD, 2601 BLAKE STREET, COLORADO NATIONAL BANK, INTERIOR SERVICES, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

Glen K. Sandlin hereby petitions the Supreme Court of the United States to issue a writ of certiorari to review the dismissal of his state court case to enforce his federal court judgment for willful age discrimination in employment.

OPINIONS BELOW

Reference is hereby made to the order issued by the Colorado Supreme

Court on August 22, 1994 denying petitioner's petition for a writ of certiorari. This order, as well as the order issued by the Colorado Supreme Court on September 8, 1994 striking petitioner's petition for rehearing, and the order issued by the Colorado Court of Appeals on March 3, 1994 affirming the dismissal of petitioner's state court case, are reproduced in the appendix to this petition at pages 1, 2, and 3-9, respectively.

JURISDICTION

On August 22, 1994, the Colorado Supreme Court issued its order denying petitioner's petition for a writ of certiorari to review the order of the Colorado Court of Appeals affirming the dismissal of his state court case to enforce his federal court judgment for willful age discrimination in employment.

The statutory provision believed to confer on the Supreme Court of the United States jurisdiction to review this order by writ of certiorari is 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the Constitution of the United States provides in relevant part as follows:

> Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

On June 28, 1990, petitioner obtained a judgment in the United States District Court for the District of Colorado against Corporate Interiors, Inc. (a Colorado corporation of which Svein Reichborn-Kjennerud is the president and sole director and shareholder) for $142,226.00 plus

interest at the legal rate of 8.24% per annum. Petitioner's judgment was issued by United States District Judge Richard P. Matsch after a jury finding of willful age discrimination in employment under 29 U.S.C. §§ 621-634. Judge Matsch subsequently assessed attorney fees and costs of $27,752.00 against Corporate Interiors, Inc.; but dismissed for lack of ancillary jurisdiction petitioner's postjudgment collection proceedings against Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud (the wife of Svein Reichborn-Kjennerud), 2601 Blake Street (a Colorado general partnership of which Svein and Sandra Reichborn-Kjennerud are the general partners), Colorado National Bank of Denver (the lender for the other parties named in the postjudgment collection proceedings), and Interior

Services, Inc. The United States Court of Appeals for the Tenth Circuit subsequently affirmed the dismissal of petitioner's postjudgment collection proceedings in Sandlin v. Corporate Interiors Inc., et al., 972 F.2d 1212 (10th Cir. 1992); and then denied petitioner's petition for rehearing and suggestion for rehearing en banc, which argued that the decision in Sandlin is inconsistent with the decision in Finley v. United States, 490 U.S. 545, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989), as well as most federal court decisions addressing the ancillary jurisdiction issue.[1] The

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[1]In Finley, Justice Scalia said:

> While in a narrow class of cases a federal court may assert authority over such a claim 'ancillary' to jurisdiction otherwise properly vested--for example, . . . when necessary to give effect to the court's judgment, see, e.g., Local Loan Co. v. Hunt, 292 U.S. 234, 239,

54 S.Ct. 695, 697, 78 L.Ed. 1230 (1934); Julian v. Central Trust Co., 193 U.S. 93, 112-114, 24 S.Ct. 399, 407-408, 48 L.Ed. 629 (1904)--we have never reached such a result solely on the basis that the Gibbs test has been met.

Finley, 109 S.Ct. at 2008. See also Dugas v. American Sur. Co. of New York, 300 U.S. 414, 428, 57 S.Ct. 515, 521, 81 L.Ed. 720, 727-28 (1937)("[A supplemental] bill may be brought in a federal court in aid of and to effectuate its prior decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect . . . . Such a bill is ancillary and dependent, and therefore the jurisdiction follows that of the original suit, regardless of the citizenship of the parties to the bill or the amount in controversy"); Colorado Building and Construction Trades Council v. Andersen Construction Co., 879 F.2d 809, 810 (10th Cir. 1989)(ancillary jurisdiction over a postjudgment dispute among competing creditors of a judgment debtor); Sheet Metal Workers Health & Welfare Trust v. Big D Service Co., 876 F.2d 852 (10th Cir. 1989)(ancillary jurisdiction over a motion filed to collect attorney's fees awarded in connection with a postjudgment collection action); Crosby v. Mills, 413 F.2d 1273, 1275-76 (10th Cir. 1969)("[W]hen an independent action is brought to obtain Rule 60(b) relief in the federal court that rendered the initial judgment, there is ancillary

Tenth Circuit also refused to consider what impact 28 U.S.C. § 1367 dealing with

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jurisdiction over the action despite absence of a federal question or diversity of citizenship"); Christiansen v. Mechanical Contractors Bid Depository, 404 F.2d 324 (10th Cir. 1968)(ancillary jurisdiction over postjudgment successor liability and alter ego claims); Blackburn Truck Lines, Inc. v. Francis, 723 F.2d 730, 733 n. 1 (9th Cir. 1984)(ancillary jurisdiction held to exist in an action to pierce the corporate veil to reach the owners of bankrupt judgment debtor corporations in part because 'we do not view this suit as separate and apart from the original judgment'); Argento v. Village of Melrose Park, 838 F.2d 1483, 1487-93 (7th Cir. 1988)(ancillary jurisdiction over collection proceedings against town employing judgment debtors in section 1983 action); McKee-Berger-Mansueto, Inc. v. Board of Education, 691 F.2d 838, 831-32 (7th Cir. 1982)(court had continuing jurisdiction to adjudicate conflicting claims to monies owed as a result of an adverse judgment); Skevofilax v. Township of Edison, 810 F.2d 378, 385 (3rd Cir. 1987)(en banc), cert. denied 481 U.S. 1029 (ancillary jurisdiction over collection proceedings against town employing judgment debtors in section 1983 action).

supplementary jurisdiction might have on petitioner's case.[2]

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[2]In this connection, one commentator said:

> The new statute was adopted as § 310 of the Judicial Improvements Act of 1990. Title III of that Act, which at one point was independent legislation, was intended "to implement the non-controversial recommendations of the Federal Courts Study Committee . . . ." The Federal Courts Study Committee was a distinguished group appointed pursuant to an Act of Congress. Its recommendation 2.B.2.b was: "Congress should expressly authorize federal courts to assert pendent jurisdiction over parties without an independent federal jurisdictional base." The reasoning of the Committee justifying that recommendation is set out in the margin.
>
> . . .
>
> The new statute is applicable only to civil actions commenced on or after December 1, 1990. <u>But where there are nice questions about what the law in this area was before the adoption of the statute, courts may well think that the expression by Congress of what it regards as wise policy in the ordering of the courts is a useful guide to the</u>

After petitioner was precluded from enforcing his federal court judgment in federal court, he filed suit in the District Court in and for the City and County of Denver, which dismissed his case because of alleged pleading defects in his amended complaint. The Colorado Court of Appeals subsequently affirmed the dismissal of petitioner's state court case in an unpublished order, which the Colorado Supreme Court refused to review on petition for a writ of certiorari. The Colorado Supreme Court then struck petitioner's petition for rehearing, which argued that he had been deprived of his First Amendment right to petition the government for a redress of grievances.

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result that ought to be reached. [Emphasis added.]

[Footnotes omitted.] 13B Charles A. Wright et al., Federal Practice & Procedure § 3567.3 (2d ed. Supp. 1992).

ARGUMENT

When considered in conjunction with the dismissal for lack of ancillary jurisdiction of petitioner's federal court case, the dismissal of petitioner's state court case had the effect of precluding him from enforcing his federal court judgment for willful age discrimination in employment in either the state or the federal courts. The dismissal of petitioner's state court case was based on an arbitrary and discriminatory application of state procedural rules.[3] Petitioner was

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[3]As is readily apparent from a review of petitioner's amended complaint, which is reproduced in the appendix to this petition at pages 10-27, the dismissal of his state court case to enforce his federal court judgment for willful age discrimination in employment was based on an arbitrary and discriminatory application of the well-established standard of review on a motion to dismiss:

therefore deprived of his First Amendment

'A short and plain statement of the claim showing that the pleader is entitled to relief' is all that C.R.C.P. 8(a)(2) requires. See Hinsey v. Jones, 159 Colo. 326, 329, 411 P.2d 242, 244 (1966). In determining a motion to dismiss a complaint, a court must accept all averments of material fact contained in the complaint as true. C.R.C.P. 12(b)(5). Board of County Comm'rs v. City of Thornton, 629 P.2d 605, 609 (Colo. 1981). A complaint is sufficient to withstand a motion to dismiss if the plaintiff states a claim that would entitle him to relief. Dillinger v. North Sterling Irrigation Dist., 135 Colo. 100, 101, 308 P.2d 608, 609 (1957). The same standards for determining a motion to dismiss apply to both the trial court and the appellate court. See Espinoza v. O'Dell, 633 P.2d 455, 467 (Colo. 1981); McDonald v. Lakewood Country Club, 170 Colo. 355, 461 P.2d 437 (1969).

Shapiro and Meinhold v. Zartman, 823 P.2d 120, 122-123 (Colo. 1992); see also Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

right to petition the government for a redress of grievances.[4]

CONCLUSION

Petitioner requests the Supreme Court of the United States to reinstate and remand his state court case for further proceedings not inconsistent with the First Amendment. Alternatively, petitioner requests the Supreme Court to reinstate and remand his federal court

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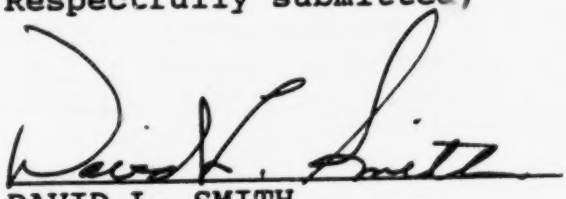
[4]See NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963) ("And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances. . . ."); Brotherhood of Railroad Trainmen v. Virginia, 377 U.S. 1, 84 S.Ct. 1113, 12 L.Ed.2d 89 (1964); United Mine Workers v. Illinois, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967); United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971); Bill Johnson's Restaurants v. NLRB, 461 U.S. 731, 103 S.Ct. 2161, 76 L.Ed.2d 277 (1983); Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 104 S.Ct. 2803, 81 L.Ed.2d 732 (1984).

case for further proceedings not inconsistent with the decision in Finley v. United States, 490 U.S. 545, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989), as well as most federal court decisions addressing the ancillary jurisdiction issue. See also 28 U.S.C. § 1367.

Respectfully submitted,



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No._____

IN THE
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GLEN K. SANDLIN,

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v.

CORPORATE INTERIORS, INC., SVEIN REICHBORN-KJENNERUD, SANDRA REICHBORN-KJENNERUD, 2601 BLAKE STREET, COLORADO NATIONAL BANK, INTERIOR SERVICES, INC.,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

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SUPREME COURT, STATE OF COLORADO
CASE NO. 94SC259
CERTIORARI TO THE COLORADO COURT OF APPEALS, 93CA0741
DISTRICT COURT, CITY AND COUNTY OF DENVER, 92CV6282

ORDER OF COURT

GLEN K. SANDLIN,

Petitioner,

v.

CORPORATE INTERIORS, INC.; SVEIN REICHBORN-KJENNERUD; SANDRA REICHBORN-KJENNERUD; 2601 BLAKE STREET; COLORADO NATIONAL BANK; INTERIOR SERVICES, INC.,

Respondents.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and same hereby is, DENIED.

BY THE COURT, EN BANC, AUGUST 22, 1994.

SUPREME COURT, STATE OF COLORADO
CASE NO. 94SC259
CERTIORARI TO THE COLORADO COURT OF APPEALS, 93CA0741
DISTRICT COURT, CITY AND COUNTY OF DENVER, 92CV6282

ORDER OF COURT

GLEN K. SANDLIN,

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v.

CORPORATE INTERIORS, INC.; SVEIN REICHBORN-KJENNERUD; SANDRA REICHBORN-KJENNERUD; 2601 BLAKE STREET; COLORADO NATIONAL BANK; INTERIOR SERVICES, INC.,

Respondents.

Upon consideration of the Petition for Rehearing filed in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Petition shall be, and same hereby is, STRICKEN. C.A.R. 54(b).

BY THE COURT, SEPTEMBER 8, 1994.

COLORADO COURT OF APPEALS March 3, 1994
No. 93CA0741 NOT SELECTED FOR PUBLICATION

Glen K. Sandlin,

Plaintiff-Appellant,

v.

Corporate Interiors, Inc.; Svein Reichborn-Kjennerud; Sandra Reichborn-Kjennerud; 2601 Blake Street; Colorado National Bank of Denver; and Interior Services, Inc.,

Defendants-Appellees.

Appeal from the District Court of the City and County of Denver
Honorable Lynne M. Hufnagel, Judge
No. 92CV6282

Division III JUDGMENT AFFIRMED
Opinion by Judge Taubman
Criswell and Davidson, JJ., concur

Plaintiff, Glen K. Sandlin, appeals the dismissal of his complaint against defendants, Corporate Interiors, Inc.; Svein and Sandra Reichborn-Kjennerud; 2601 Blake Street; Colorado National Bank; and Interior Services, Inc. We affirm.

Plaintiff filed a complaint which contained eight numbered paragraphs of

allegations on three and one-half single-spaced typewritten pages. The prayer for relief contained ten claims in a single paragraph covering about one-half page. As best we can determine, plaintiff alleged that he had obtained a judgment in federal court against defendant Corporate Interiors, Inc., but had not been able to collect it due to defendants' unspecified actions or inactions.

The trial court ordered plaintiff to file an amended complaint delineating specific causes of action "as defined in the Colorado Jury Instructions, Third Edition," stating against which defendants the claims were brought, and complying with the Colorado Rules of Civil Procedure. The court stated that it had "no idea what is being alleged" and that the action would be dismissed if a proper amended complaint were not filed.

Plaintiff filed an amended complaint alleging six numbered courts: a conspiracy claim against all defendants; a "statute of frauds" claim against all defendants; a breach of fiduciary claim against Svein Reichborn-Kjennerud; an "alter ego" claim against the Reichborn-Kjenneruds and 2601 Blake Street; a "lender liability" claim against Colorado National Bank; and a "successor liability" claim against Interior Services, Inc. The amended complaint referred to sworn testimony, exhibits, and depositions in "postjudgment Rule 69(a) proceedings in the federal lawsuit" and the "personal bankruptcy case of

Douglas L. Canady, who was officer, director, and shareholder of Defendant Interior Services, Inc." The amended complaint purported to incorporate those items "by reference for all purposes," although none was attached.

Defendants moved to dismiss the amended complaint or for a more definite statement. Plaintiff responded that, although his claims were not defined in the Colorado Jury Instructions, they were stated with the required specificity and in compliance with the trial court's order.

The trial court found that plaintiff's amended complaint failed to comply with the requirements of C.R.C.P. 8 and 9 as to all claims and also failed to state a claim for relief as to breach of fiduciary against Svein Reichborn-Kjennerud and lender liability against Colorado National Bank. The court noted that there were no concise statements identifying the parties or their relationship to one another, no statements regarding jurisdiction or venue, and the averments were not "simple, concise, and direct." Although the plaintiff alleged fraudulent conveyances, none was identified by date, property conveyed, or circumstances to suggest that fraud was involved. Because the prior order gave plaintiff the opportunity to submit a proper amended complaint and he failed to do so, the trial court dismissed the complaint.

Plaintiff contends that his amended complaint complied with the pleading

requirements of the prior order, the Colorado Rules of Civil Procedure, and applicable case law. We disagree.

In reviewing the trial court's dismissal of the complaint, we must view the allegations of the complaint as true and in a light most favorable to the plaintiff. The complaint cannot be dismissed unless it appears that the plaintiff is entitled to no relief under any statement of facts which may be proved in support of the claims. National Camera, Inc. v. Sanchez, 832 P.2d 960 (Colo. App. 1991).

A complaint is sufficient to withstand a motion to dismiss if the plaintiff states a claim that would entitle him to relief and apprises the defendant of the nature of the claim and the events or transactions relied upon. Shapiro & Meinhold v. Zartman, 823 P.2d 120 (Colo. 1992); Eliminator, Inc. v. 4700 Holly Corp., 681 P.2d 536 (Colo. App. 1984).

C.R.C.P. 8 provides that pleadings which set forth a claim for relief shall contain a short and plain statement of the claim showing that the pleader is entitled to relief, and each averment of a pleading shall be simple, concise, and direct.

C.R.C.P. 9(b) requires that in all averments of fraud, the circumstances constituting the fraud shall be stated with particularity. Particularity is required as to all material elements of a

fraud action. Kinsey v. Preeson, 746 P.2d 542 (Colo. 1987).

The complaint need not set forth all the evidence that may be adduced to prove fraud, but it must state the main facts or incidents which constitute the fraud. Fidelity Finance Co. v. Groff, 124 Colo. 223, 235 P.2d 994 (1951).

Here, as noted by the trial court, plaintiff's amended complaint did not comply with those rules. See Borwick v. Bober, 34 Colo. App. 423, 529 P.2d 1351 (1974).

Plaintiff's attempt to incorporate documents which were not attached to the amended complaint was ineffective to supply the necessary averments. See C.R.C.P. 10(c); cf., Borwick v. Bober, supra.

Thus, even construing the pleading in plaintiff's favor as we must, see C.R.C.P. 8(f); Spomer v. City of Grand Junction, 144 Colo. 207, 355 P.2d 960 (1960), we conclude that the amended complaint did not give defendants adequate notice of the transactions upon which plaintiff based his claims.

Plaintiff is correct that specific statements as to venue, jurisdiction, and the relationship of the parties were not necessary here, see C.R.C.P. 8(a), and causes of action other than those described in the Colorado Jury Instructions may be alleged, see C.R.C.P. 51.1(2); CJI-Civ. 3d (1988) (General Directions for Use) (form jury

instructions are not all-inclusive or encyclopedic). Also, to the extent plaintiff sought equitable relief, CJI-Civ. 3d is inapplicable. See e.g. CJI-Civ. 3d 31:4 (Notes on Use) (since promissory estoppel is an equitable claim, no instruction provided).

Nonetheless, we agree with the trial court that plaintiff's amended complaint failed to show that he was entitled to some relief "upon any theory of law." Cf. Borwick v. Bober, supra (when with "diligent and exhaustive study," the court was able to understand plaintiff's pleadings and theory of the case, it was error to dismiss the complaint). Not only were the allegations insufficiently pled, but the breach of fiduciary duty and lender liability allegations failed to indicate what duty defendants had to plaintiff or how it was breached, under "any theory of law."

Therefore, the amended complaint failed to state claims upon which relief could be granted, and the action was properly dismissed. See C.R.C.P. 12(e) (if order for more definiteness or particularity is not obeyed, the court may strike the pleading or make such order as it deems just).

Plaintiff also contends that the trial court was biased and discriminated against him in dismissing his lawsuit. We do not address that contention, as it was raised for the first time on appeal. See C.R.C.P. 97; Christensen v. Hoover, 643 P.2d 525 (Colo. 1982).

The judgment is affirmed.

JUDGE CRISWELL and JUDGE DAVIDSON concur.

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. 92CV6282, Courtroom 9

AMENDED COMPLAINT

GLEN K. SANDLIN,

Plaintiff,

v.

CORPORATE INTERIORS, INC., SVEIN REICHBORN-KJENNERUD, SANDRA REICHBORN-KJENNERUD, 2601 BLAKE STREET, COLORADO NATIONAL BANK, and INTERIOR SERVICES, INC.,

Defendants.

COUNT I

(Conspiracy Claim Against Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc.)

First Averment: Since at least August of 1983 and continuing to the present, Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior

Services, Inc. have engaged in a course of concerted conduct amounting to a conspiracy with each other and with unknown third persons for the purpose of making, or causing to be made, conveyances of and charges upon the property of Defendant Corporate Interiors, Inc. with the intent to hinder, delay, and defraud creditors and other persons, including Plaintiff Glen K. Sandlin, of their lawful suits, damages, forfeitures, debts, and demands, in violation of C.R.S. § 38-10-117.[1]

Second Averment: One or more persons or entities engaged in the conspiracy alleged in the foregoing First Averment did, or caused to be done, the following acts in furtherance of the object of such conspiracy, whereby Plaintiff Glen K. Sandlin was injured in his person or property:

A. On numerous occasions between August of 1983 and August of 1989, Defendant Svein Reichborn-Kjennerud made unauthorized pledges of property owned by Defendant Corporate Interiors, Inc. as collateral for loans made by Defendant Colorado National Bank to Defendant 2601 Blake Street to finance Defendant 2601 Blake Street's real estate transactions. At all times relevant to these unauthorized pledges of property,

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[1]Defendant Interior Services, Inc. did not join the conspiracy until November of 1989.

Defendant Svein Reichborn-Kjennerud was officer, director, and shareholder of Defendant Corporate Interiors, Inc., and was also general partner with his wife, Defendant Sandra Reichborn-Kjennerud, in Defendant 2601 Blake Street. Defendant Colorado National Bank made the loans to Defendant 2601 Blake Street despite its knowledge of the unauthorized pledges of property. Defendants Svein Reichborn-Kjennerud and Sandra Reichborn-Kjennerud were personal guarantors on the loans.

B. Beginning in August of 1989 and continuing through at least April of 1990, Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc. sold and otherwise made, or caused to be made, conveyances of and charges upon the property of Defendant Corporate Interiors, Inc. At all times relevant to these conveyances and charges, Defendant Svein Reichborn-Kjennerud was officer, director, and shareholder of Defendant Corporate Interiors, Inc., and was general partner with his wife, Defendant Sandra Reichborn-Kjennerud, in Defendant 2601 Blake Street. Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc.

aided, abetted, and participated in these conveyances and charges despite the fact that they knew that Defendant Corporate Interiors, Inc. was insolvent, and despite the fact that they knew that Plaintiff Glen K. Sandlin had filed, in May of 1989, a federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc.

C. In October of 1989, Defendant Svein Reichborn-Kjennerud and his attorneys successfully delayed the trial of Plaintiff's federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc. from October of 1989 to June of 1990 so that the property owned by Defendant Corporate Interiors, Inc. could be sold and the proceeds from the sale of the property could be applied to assist in the repayment of the loans made by Defendant Colorado National Bank to Defendant 2601 Blake Street before trial and entry of judgment. Defendant Colorado National Bank knew that the trial was being delayed, and aided, abetted, and participated in the delay.

D. In late 1989 and early 1990, Defendants Svein Reichborn-Kjennerud and Colorado National Bank conveyed a substantial portion of the remaining assets of Defendant Corporate Interiors, Inc. to Defendant Interior Services, Inc., which continued Defendant Corporate

Interiors, Inc.'s business at the same location in Denver, Colorado with essentially the same jobs, employees, and supervisors under essentially the same working conditions. At all times relevant to the conveyance of assets, Defendant Interior Services, Inc. knew about Plaintiff Glen K. Sandlin's federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc. Defendants Svein Reichborn-Kjennerud, Colorado National Bank, and Interior Services, Inc. entered into the conveyance of assets fraudulently to attempt to escape liability for the debts of Defendant Corporate Interiors, Inc., including liability for the age discrimination claim being pursued by Plaintiff Glen K. Sandlin in federal court.

E. In April of 1990, Defendants Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, and Colorado National Bank entered into a written agreement requiring the proceeds from the sale of the property owned by Defendant Corporate Interiors, Inc. to be used to assist in the repayment of the loans made by Defendant Colorado National Bank to Defendant 2601 Blake Street. While the agreement permits Defendants Svein Reichborn-Kjennerud and Sandra Reichborn-Kjennerud, who are personal guarantors on the loans, to pay off the remaining balance on the loans

and thus prevent foreclosure on their home in Denver, Colorado, no provision is made or consideration given for paying off the creditors of Defendant Corporate Interiors, Inc., including Plaintiff Glen K. Sandlin.

F. Subsequent to the April of 1990 agreement, Defendants Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, and Colorado National Bank applied the proceeds from the sale of the property owned by Defendant Corporate Interiors, Inc. to assist in the repayment of the loans made by Defendant Colorado National Bank to Defendant 2601 Blake Street. Upon information and belief, Defendant Colorado National Bank has not foreclosed on the home of Defendants Svein Reichborn-Kjennerud and Sandra Reichborn-Kjennerud to pay off the remaining balance on the loans.

Third Averment: As the result of the wrongful actions alleged in the foregoing First and Second Averments, Defendant Corporate Interiors, Inc. has been divested of its assets, and Plaintiff Glen K. Sandlin has been unable to collect the judgment entered in his favor in the federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc. This judgment was entered on June 28, 1990, and was in the amount of $142,226.00 plus interest at the legal rate of 8.24% per annum. The Plaintiff has also been

unable to collect the attorney fees of $26,425.00 and costs of $830.60 awarded in his favor in the federal lawsuit.

Fourth Averment: In sworn testimony at the postjudment Rule 69(a) proceedings in the federal lawsuit referred to in the foregoing Third Averment, Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc. made numerous statements and identified numerous exhibits relevant to the wrongful actions alleged in the foregoing First, Second, and Third Averments. These statements and exhibits are incorporated into this Count I by reference for all purposes.

Fifth Averment: Plaintiff Glen K. Sandlin did not discover the wrongful actions alleged in the foregoing First, Second, and Third Averments until August and September of 1990 during the postjudgment Rule 69(a) proceedings referred to in the foregoing Fourth Averment.[2] Additional evidence was

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[2]On November 30, 1990, United States District Judge Richard P. Matsch dismissed Plaintiff's postjudgment Rule 69(a) proceedings and separate collection action for lack of ancillary jurisdiction. The United States Court of Appeals for the Tenth Circuit affirmed Judge Matsch's dismissals on August 18, 1992, and Plaintiff's petition for rehearing was denied on September 21, 1992.

discovered during the personal bankruptcy case of Douglas L. Canady, who was officer, director, and shareholder of Defendant Interior Services, Inc. This evidence, which is in the form of depositions, deposition exhibits, and sworn trial testimony, is incorporated into this Count I by reference for all purposes.

Relief Requested: Plaintiff Glen K. Sandlin hereby requests the Court and jury to declare void and set aside the fraudulent conveyances of and charges upon the property owned by Defendant Corporate Interiors, Inc., or in the alternative, to impose a constructive trust on the property, or on the proceeds from the sale of the property, owned by Defendant Corporate Interiors, Inc., for the benefit of the Plaintiff; to award the Plaintiff all actual and compensatory damages proximately caused by the wrongful actions of Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc., including, but not limited to, damages for pain and suffering and mental and emotional distress; to award the Plaintiff reasonable exemplary damages against each of these Defendants, since the injury to Plaintiff's person and property is attended by circumstances of fraud, malice, and willful and wanton conduct; and to award the Plaintiff interest (pre- and post-judgment), costs, and attorney fees, and such other and further legal and equitable relief as the Court and jury deem appropriate.

Jury Demand: Plaintiff Glen K. Sandlin hereby demands a trial by jury of the conspiracy claim against Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, and Interior Services, Inc.

COUNT II
(Statute of Frauds Claim Against Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc.)

First Averment: Plaintiff Glen K. Sandlin hereby realleges the First, Second, Third, Fourth, and Fifth Averments of the foregoing Count I as a separate statute of frauds claim against Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc.

Second Averment: The statute of frauds referred to in the foregoing First Averment is C.R.S. § 38-10-117, which Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc. violated in the manner alleged in the First, Second, Third, Fourth, and Fifth Averments of the foregoing Count I.

Relief Requested: Plaintiff Glen K. Sandlin hereby requests the Court and jury to declare void and set aside the fraudulent conveyances of and charges upon the property owned by Defendant Corporate Interiors, Inc., or in the alternative, to impose a constructive trust on the property, or on the proceeds from the sale of the property, owned by Defendant Corporate Interiors, Inc., for the benefit of the Plaintiff; to award the Plaintiff all actual and compensatory damages proximately caused by the wrongful actions of Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, Colorado National Bank, and Interior Services, Inc., including, but not limited to, damages for pain and suffering and mental and emotional distress; to award the Plaintiff reasonable exemplary damages against each of these Defendants, since the injury to Plaintiff's person and property is attended by circumstances of fraud, malice, and willful and wanton conduct; and to award the Plaintiff interest (pre- and post-judgment), costs, and attorney fees, and such other and further legal and equitable relief as the Court and jury deem appropriate.

Jury Demand: Plaintiff Glen K. Sandlin hereby demands a trial by jury of the statute of frauds claim against Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, 2601 Blake Street, and Interior Services, Inc.

COUNT III
(Breach of Fiduciary Duty Claim Against Defendant Svein Reichborn-Kjennerud)

First Averment: Plaintiff Glen K. Sandlin hereby realleges the First, Second, Third, Fourth, and Fifth Averments of the foregoing Count I, and realleges the First and Second Averments of the foregoing Count II.

Second Averment: At all times relevant to the wrongful actions alleged in the foregoing First Averment, Defendant Svein Reichborn-Kjennerud was officer, director, and shareholder of Defendant Corporate Interiors, Inc., and owed a fiduciary duty to corporate creditors not to divest corporate property for his own use or benefit, or for the use or benefit of related persons or entities, and thereby defeat the claims of corporate creditors.

Third Averment: Beginning in August of 1989 and continuing through at least April of 1990, Defendant Svein Reichborn-Kjennerud breached the fiduciary duty referred to in the foregoing Second Averment by aiding, abetting, and participating in the sale and other conveyances of and charges upon the property of Defendant Corporate Interiors, Inc. Defendant Svein Reichborn-Kjennerud thus divested corporate property for his own use or benefit, or for the use or benefit of related persons or entities, and thereby defeated the claims of corporate creditors, including Plaintiff Glen K. Sandlin.

Relief Requested: Plaintiff Glen K. Sandlin requests the Court and jury to hold Defendant Svein Reichborn-Kjennerud liable for the debts and other liabilities of Defendant Corporate Interiors, Inc., including the judgment entered in Plaintiff's favor in the federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc., and the attorney fees and costs awarded to the Plaintiff in the federal lawsuit; to award the Plaintiff all actual and compensatory damages proximately caused by the wrongful actions of Defendant Svein Reichborn-Kjennerud, including, but not limited to, damages for pain and suffering and mental and emotional distress; to award the Plaintiff reasonable exemplary damages against Defendant Svein Reichborn-Kjennerud, since the injury to Plaintiff's person and property is attended by circumstances of fraud, malice, and willful and wanton conduct; and to award the Plaintiff interest (pre- and post-judgment), costs, and attorney fees, and such other and further legal and equitable relief as the Court and jury deem appropriate.

Jury Demand: Plaintiff Glen K. Sandlin hereby demands a trial by jury of the breach of fiduciary duty claim against Defendant Svein Reichborn-Kjennerud.

COUNT IV

(Alter Ego Claim Against Defendants Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, and 2601 Blake Street)

First Averment: Plaintiff Glen K. Sandlin hereby realleges the First, Second, Third, Fourth, and Fifth Averments of the foregoing Count I, realleges the First and Second Averments of the foregoing Count II, and realleges the First, Second, and Third Averments of the foregoing Count III.

Second Averment: At all times relevant to the wrongful actions alleged in the foregoing First Averment, Defendant Svein Reichborn-Kjennerud was officer, director, and shareholder of Defendant Corporate Interiors, Inc., and was general partner with his wife, Defendant Sandra Reichborn-Kjennerud, in Defendant 2601 Blake Street.

Third Averment: Under the circumstances alleged in the foregoing First and Second Averments, there is a unity of interest, ownership, and management among Defendants Corporate Interiors, Inc., Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, and 2601 Blake Street; the separate personality of each of these Defendants no longer exists; Defendant Corporate Interiors, Inc. is a mere alter ego or instrumentality for the transaction of the affairs of Defendants Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, and 2601 Blake Street; and to adhere to the fiction of the corporate entity with respect to Defendant

Corporate Interiors, Inc. would promote injustice and protect the fraud alleged in the foregoing First Averment.

Relief Requested: Plaintiff Glen K. Sandlin requests the Court and jury to pierce the corporate veil and hold Defendants Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, and 2601 Blake Street liable for the debts and other liabilities of Defendant Corporate Interiors, Inc., including the judgment entered in Plaintiff's favor in the federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc., and the attorney fees and costs awarded to the Plaintiff in the federal lawsuit; to award the Plaintiff all actual and compensatory damages proximately caused by the wrongful actions of Defendants Svein Reichborn-Kjennerud, Sandra Reichborn-Kjennerud, and 2601 Blake Street, including, but not limited to, damages for pain and suffering and mental and emotional distress; to award the Plaintiff reasonable exemplary damages against each of these Defendants, since the injury to Plaintiff's person and property is attended by circumstances of fraud, malice, and willful and wanton conduct; and to award the Plaintiff interest (pre- and post-judgment), costs, and attorney fees, and such other and further legal and equitable relief as the Court and jury deem appropriate.

Jury Demand: Plaintiff Glen K. Sandlin hereby demands a trial by jury of the alter ego claim against Defendants Svein Reichborn-Kjennerud, Sandra

Reichborn-Kjennerud, and 2601 Blake Street.

COUNT V
(Lender Liability Claim Against Defendant Colorado National Bank)

First Averment: Plaintiff Glen K. Sandlin hereby realleges the First, Second, Third, Fourth, and Fifth Averments of the foregoing Count I, realleges the First and Second Averments of the foregoing Count II, realleges the First, Second, and Third Averments of the foregoing Count III, and realleges the First, Second, and Third Averments of the foregoing Count IV.

Second Averment: Since at least August of 1989, Defendant Colorado National Bank has exercised excessive control over the business operations of Defendant Corporate Interiors, Inc., thus creating a fiduciary duty in Defendant Colorado National Bank to the creditors of Defendant Corporate Interiors, Inc., including Plaintiff Glen K. Sandlin.

Third Averment: Defendant Colorado National Bank has breached the fiduciary duty alleged in the foregoing Second Averment by aiding, abetting, and participating in the wrongful actions alleged in the foregoing First Averment.

Relief Requested: Plaintiff Glen K. Sandlin hereby requests the Court and jury to hold Defendant Colorado National Bank of Denver liable for the debts and other liabilities of Defendant Corporate

Interiors, Inc., including the judgment entered in Plaintiff's favor in the federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc., and the attorney fees and costs awarded to the Plaintiff in the federal lawsuit; to award the Plaintiff all actual and compensatory damages proximately caused by the wrongful actions of Defendant Colorado National Bank, including, but not limited to, damages for pain and suffering and mental and emotional distress; to award the Plaintiff reasonable exemplary damages against Defendant Colorado National Bank, since the injury to Plaintiff's person and property is attended by circumstances of fraud, malice, and willful and wanton conduct; and to award the Plaintiff interest (pre- and post-judgment), costs, and attorney fees, and such other and further legal and equitable relief as the Court and jury deem appropriate.

Jury Demand: Plaintiff Glen K. Sandlin hereby demands a trial by jury of the lender liability claim against Defendant Colorado National Bank.

COUNT VI
(Successor Liability Claim Against Defendant Interior Services, Inc.)

First Averment: Plaintiff Glen K. Sandlin hereby realleges the First, Second, Third, Fourth, and Fifth Averments of the foregoing Count I, and realleges the First and Second Averments of the foregoing Count II.

Second Averment: Defendant Interior Services, Inc. is merely a continuation of Defendant Corporate Interiors, Inc. The fraud alleged in the foregoing First Averment would be worked on the creditors of the predecessor, including Plaintiff Glen K. Sandlin, in the absence of successor liability.

Relief Requested: Plaintiff Glen K. Sandlin hereby requests the Court and jury to hold Defendant Interior Services, Inc. liable for the debts and other liabilities of Defendant Corporate Interiors, Inc., including the judgment entered in Plaintiff's favor in the federal lawsuit alleging age discrimination in employment against Defendant Corporate Interiors, Inc., and the attorney fees and costs awarded to the Plaintiff in the federal lawsuit; to award the Plaintiff all actual and compensatory damages proximately caused by the wrongful actions of Defendant Interior Services, Inc., including, but not limited to, damages for pain and suffering and mental and emotional distress; to award the Plaintiff reasonable exemplary damages against Defendant Interior Services, Inc., since the injury to Plaintiff's person and property is attended by circumstances of fraud, malice, and willful and wanton conduct; and to award the Plaintiff interest (pre- and post-judgment), costs, and attorney fees, and such other and further legal and equitable relief as the Court and jury deem appropriate.

Jury Demand: Plaintiff Glen K. Sandlin hereby demands a trial by jury of

the successor liability claim against Defendant Interior Services, Inc.

Dated this 23rd day of February, 1993.

Respectfully submitted,

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